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May 12, 2016

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Ms. Tiffany Clemmons
Executive Director of Specialized Services
Baltimore City Public Schools
200 East North Avenue, Room 204 B
Baltimore, Maryland 21202

RE: XXXXX
Reference: #16-085

Dear Parties:

The Maryland State Department of Education (MSDE), Division of Special Education/Early Intervention Services (DSE/EIS), has completed the investigation of the complaint regarding special education services for the above-referenced student. This correspondence is the report of the final results of the investigation.

ALLEGATIONS:

On March 17, 2016, the MSDE received a complaint from Ms. XXXXXXXXXXXX, hereafter, “the complainant,” on behalf of her son, the above-referenced student. In that correspondence, the complainant alleged that the Baltimore City Public Schools (BCPS) violated certain provisions of the Individuals with Disabilities Education Act (IDEA) with respect to the student.

The MSDE investigated the following allegations:

1. The BCPS has not ensured that the Individualized Education Program (IEP) has addressed the student’s reading needs since March 2015, in accordance with 34 CFR §§300.101 and .324.
2. The BCPS did not ensure that the IEP team followed proper procedures when determining the student’s need for Extended School Year (ESY) services for the summer of 2016, in accordance with 34 CFR §300.106 and COMAR 13A.05.01.08.
3. The BCPS has not ensured that reports on the student’s progress toward achieving the annual IEP goals for the third (3rd) and fourth (4th) quarters of the 2014 – 2015 school year were provided, in accordance with 34 CFR §300.320 and .324.

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INVESTIGATIVE PROCEDURES:

1. On March 17, 2016, the MSDE provided a copy of the State complaint, by facsimile, to Ms. Tiffany Clemmons, Executive Director of Specialized Services, BCPS, and Mr. Darnell L. Henderson, Associate Counsel, Office of Legal Counsel, BCPS. On the same date, Ms. K. Sabrina Austin, Education Program Specialist, MSDE, conducted a telephone interview with the complainant to clarify the allegations to be investigated.
2. On March 25, 2016, the MSDE sent correspondence to the complainant that identified the allegations subject to this investigation. On the same date, the MSDE notified the BCPS of the allegations and requested that the BCPS review the alleged violations.
3. On March 31, 2016 and April 4 and 26, 2016, the MSDE requested documentation from the BCPS.
4. On April 12, 2016, Ms. Austin conducted a review of the student's educational record at the BCPS Central Office.
5. On April 13, 2016, Ms. Austin, Mr. Gerald Loiacono, Education Program Specialist, MSDE, and Ms. Anita Mandis, Section Chief, Complaint Investigation Section, MSDE, conducted a site visit at XXXXXXXXX Elementary School (XXXXXXXXXX ES) and interviewed the following school system staff:
 - a. Ms. Annette Boone, Teacher of the Visually Impaired, BCPS;
 - b. Ms. XXXXXXXX, Special Education Teacher, XXXXXXXXXXXX ES;
 - c. Ms. XXXXXXXX, General Education Teacher, XXXXXXXXXXXX ES;
 - d. Ms. Crystal Gault, Occupational Therapist, BCPS;
 - e. Ms. Karen Jones, Adapted Physical Education Teacher, BCPS;
 - f. Ms. Serene Peterson, Due Process Specialist, BCPS;
 - g. Ms. Leah Phillips, Orientation and Mobility Specialist, BCPS;
 - h. Ms. Gloria Rinonos, Occupational Therapist Student Intern, BCPS; and
 - i. Ms. XXXXXXXXXXXX, IEP Chairperson, XXXXXXXXXXXX ES.

Mr. Henderson participated in the site visit as a representative of the BCPS and to provide information on the school system's policies and procedures, as needed.

6. On April 13, 15, and 18, 2016, the BCPS provided documentation to the MSDE for consideration.
7. On April 25 and 28, 2016, the MSDE received additional documentation from the complainant.

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8. The MSDE reviewed documentation, relevant to the findings and conclusions referenced in this Letter of Findings, which includes:
 - a. Reports of the student's progress towards mastery of the annual IEP goal addressing reading comprehension, dated March 25, 2015, November 5, 2015, January 22, 2016, and March 11, 2016;
 - b. The Home and Hospital Return to School Form, reflecting the student's grades for the second (2nd) marking period of the 2015 - 2016 school year;
 - c. Correspondence from the school system to the complainant identifying the expiration of Home and Hospital Teaching instruction, dated December 8, 2016;
 - d. The school staff's "Service Coordination Activity Log" recording dates when progress reports were sent, September 2013 to June 2016;
 - e. Amended IEP, dated February 19, 2015;
 - f. IEP, dated September 11, 2015;
 - g. Prior Written Notice, dated September 14, 2015;
 - h. IEP, dated October 7, 2015, and Prior Written Notice, dated October 7, 2015;
 - i. Report of a neuropsychological evaluation privately obtained by the complainant, dated October 23, 2015;
 - j. IEP, dated December 16, 2015, and Prior Written Notice, dated December 16, 2015;
 - k. Notices of the IEP team meetings scheduled for February 9, 2016 and March 11, 2016;
 - l. IEP, dated March 11, 2016, and Prior Written Notice, dated March 11, 2016;
 - m. Receipt of Parental Rights, dated March 11, 2016;
 - n. Amended IEP, dated April 4, 2016;
 - o. Samples of the student's performance on informal reading assessments, dated January 2015 to March 2015;
 - p. The i-Ready assessment reports, December 2015 and March 2016;
 - q. The student's report card for the first (1st), second (2nd), and third (3rd) quarters of the 2015 - 2016 school year;
 - r. Electronic mail communication (email) between the school staff and the complainant, dated March 18, 2016;
 - s. Correspondence from the complainant to the school system, dated April 21, 2016, with attachments from the school system concerning the student's participation in Extended School Year (ESY) services; and
 - t. Correspondence from the complainant alleging violations of the IDEA, received by the MSDE on March 17, 2016.

BACKGROUND:

The student is eleven (11) years old, is identified as a student with Multiple Disabilities under the IDEA including a Specific Learning Disability and a Visual Impairment, and has an IEP that requires the provision of special education and related services. The student is in the fifth (5th) grade and attends XXXXXXXXXX Elementary School (Doc. l).

During the period of time addressed by this investigation, the complainant participated in the education-making process and was provided with written notice of the procedural safeguards (Doc. m).

ALLEGATION #1 IEP THAT ADDRESSES THE STUDENT'S READING NEEDS

FINDINGS OF FACTS:

1. The IEP in effect at the start of the 2015 - 2016 school year was developed on December 2, 2014, and amended on February 19, 2015, while the student was in the fourth (4th) grade. The February 19, 2015 IEP reflects that the student was performing at the early second (2nd) grade instructional level in reading comprehension, and that he reads "some words" that are on the end of the first (1st) grade level. The February 19, 2015 IEP included one (1) reading comprehension goal requiring the student to develop comprehension skills through exposure to a variety of reading materials, and objectives indicating that grade level texts were to be used (Doc. e).
2. The February 19, 2015 IEP required that the student receive two (2) hours per day of specialized instruction in the general education classroom, and two (2) hours per day of specialized instruction in a separate special education classroom, in order to address his academic needs (Doc. e).
3. At the start of the 2015 - 2016 school year, the student remained hospitalized following his admission, in July 2015, to the Mt. Washington Pediatric Hospital. On September 11, 2015, the IEP team revised the student's IEP to require six (6) hours per week of Home and Hospital Teaching (HHT) instruction to address his academic goals, including reading comprehension (Docs. f, g, and i, and interview with the school staff).
4. In October 2015, the school staff documented that the student "has trouble reading sight words and with comprehension," and that he functions on the first (1st) grade level in reading (Doc. h).

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5. The following documentation reflects the student's progress in reading while receiving HHT instruction:
 - The November 2015 report of the student's progress states that the student was making sufficient progress towards mastery of the annual IEP reading comprehension goal.
 - The student's first (1st) quarter report card for the 2015 - 2016 school year reflects that he achieved a "satisfactory" grade in language arts, and that "with accommodations, the student is making progress" (Docs. a and q).
6. On December 16, 2015, in preparation for the student's return to school, the IEP team convened to review the student's IEP. The IEP team reviewed the student's previous IEP and information from the complainant. The IEP team determined that it did not have sufficient information to revise or update the IEP due to the student's absence from school since the start of the 2015 - 2016 school year. The IEP team determined that the student would be provided with the IEP services and supports required by the IEP in effect prior to his hospitalization, and to reconvene after the school staff had the opportunity to "work with [him] and informally assess him." The school staff requested that the complainant provide the IEP team with the reports of any privately obtained assessments, to be reviewed at the subsequent IEP team meeting.¹ The complainant declined permission to allow the school staff to communicate with hospital staff (Doc. j).
7. The student returned to school on December 21, 2015 (Doc. l).
8. On January 22, 2016, the school staff documented that the student was "making slow but steady progress" towards mastery of the annual IEP reading comprehension goal. The school staff also documented that the student had recently returned to school and that his comprehension goal and objectives were being "revisited." The school staff explained that because the student presented as "a totally different student" when he returned to school, demonstrating fewer skills than he had previously achieved in school, they wanted to consider the possibility of revising the student's goals if he was unable to recoup previously learned skills (Doc. a and interview with the school staff).
9. The IEP team convened on March 11, 2016 to review the student's IEP and to review a private assessment provided by the complainant² (Docs. k and l).

¹ The Prior Written Notice dated states that the IEP team meeting was scheduled for January 2016 (Doc. j).

² An earlier IEP team meeting scheduled for February 9, 2016 did not take place due to a weather-related school closure (Doc. k and interview with the school staff).

10. At the March 11, 2016 IEP team meeting, the IEP team reviewed the October 2015 report of a neuropsychological assessment that the complainant privately obtained.³ The report identifies that the student's overall reading skills were in the "extremely low range," equivalent to the kindergarten level. The report states that the student was able to read common, two to four (2 - 4) letter words, such as "is," "to," "like," and "that," but that he was unable to read simple words, such as "time," "does," and "been." The report also indicates that the student performed in the "very low range" in the area of verbal comprehension, and in the "extremely low range" in the areas of visual spatial skills, fluid reasoning, and auditory attention and working memory. While the student's scores were lower than those obtained from his previous testing, the evaluator noted that the decrease is "likely due to the underlying medical condition" which is "yet to be determined" (Docs. i and l).
11. The evaluator diagnosed the student with an Unspecified Neurocognitive Disorder⁴ and a Specific Learning Disorder with impairments in reading, math and written expression. The report includes twenty (20) school recommendations. The school recommendations include the following:
- Placement in a structured classroom setting with a set schedule and daily routine, clear behavior expectations, and organization.
 - An "integrated classroom" setting with a low teacher to student ratio and small group direct instruction.
 - A one-to-one aide to provide assistance with his variable behavior, need for repetition and explicit instruction of new material.
 - Explicit instruction in phonological awareness and sight word identification through the use of a research based multisensory approach.
 - Extended school year services "which will need to be intensive, comprehensive, and center-based" due to the severity of his deficits and the high risk for regression.
 - Word recognition strategies, such as word walls, flow lists, word banks, flashcards and games, to build automatic sight word recognition (Doc. i).
12. At the March 11, 2016 IEP team meeting, the IEP team considered the following information about the student's progress and current level of functioning:
- The student is performing at the first (1st) grade level in reading comprehension, word recognition, and phonics.

³ The assessment was performed while the student was hospitalized (Doc. i).

⁴ The evaluator noted that a full scale IQ score could not be calculated due to the student's inability to complete processing speed subtests due to motor limitations. For this reason, the evaluator also cautioned the interpretation of index scores on subtests (Doc. i).

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- The student “doesn’t have the fundamental phonics skills needed to read [fifth] 5th grade vocabulary.”
 - The student can “orally discriminate sounds between words, identify and substitute initial consonants, but consonant blends and digraphs are difficult for him.”
 - The general education classroom teacher pre-teaches long passages of reading to the student, uses picture vocabulary cards, and presents material verbally and non-verbally to the student.
 - The student has demonstrated the ability to recoup skills lost during the time he did not receive instruction in the school setting.
 - The student “seems to only make progress when he is taught by a special education teacher one on one or in a very small group.”
 - The student “had not made significant progress on his academic goals in over a year.”
 - The student “benefits the most from services outside of general education in a small group or one on one” (Doc. 1).
13. Based on this information, the IEP team revised the student’s IEP to require twice the amount of daily specialized instruction he will receive in a separate special education classroom. The IEP clarifies that the student is to receive two (2) hours of instruction each day in reading and writing, and two (2) hours of instruction each day in math, and that the instruction is to be provided in a “small, highly structured environment” (Doc. 1).
14. The IEP team also revised the student’s reading comprehension goal. In addition, the IEP team revised the student’s IEP to require the additional accommodation of notes and outlines, as well as additional supplementary aids and supports, including word banks, peer tutoring and adult support to assist him during half (½) of the instructional day. The written summary of the March 11, 2016 IEP team meeting documents that “all supports, assessments and services” recommended in the report of the neuropsychological evaluation were included in the revised IEP (Doc. 1).
15. There is documentation that, between January 2016 and March 2016, while the student continued to read slowly, he was reading more words, self-correcting, sounding out words, and remembering words when given cues. There is also documentation that the student was working on phonics, high frequency words, and kindergarten sight words, and that he was achieving “acceptable” grades on oral reading checks (Doc. o).
16. The March 11, 2016 IEP documents that the student was participating in the *Soar to Success*⁵ reading intervention program, and that he was provided with strategies to

⁵ *Soar to Success* is a research-based reading intervention program for students in grades three (3) through eight (8) who are reading significantly below level. It is a small group model that uses motivating literature, reciprocal teaching, and graphic organizers to help students accelerate their reading growth (See the *Soar to Success* website: www.eduplace.com).

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address his reading, including modeling, small group instruction, scaffolded instruction, and multisensory presentation. The school staff also report that the student was receiving, and continues to receive, additional reading instruction through the special education teacher's use of the *i-Ready*⁶ and *Foundations*⁷ reading intervention programs in the classroom (Doc. l and interview with the school staff).

17. The student's performance on the i-Ready assessments conducted in December 2015 and March 2016 reflects an improvement in his reading ability. Specifically, the scores document that, although still reading below grade level, the student's overall reading performance increased by three (3) levels, from "Level K" in December 2015 to "Level 3" in March 2016 (Doc. p).
18. The student's 2015 - 2016 report card reflects that he achieved the grade of "satisfactory" in language arts for the first (1st) and second (2nd) quarters, and the grade of "excellent" in language arts for the third (3rd) quarter, of the 2015 – 2016 school year. His report card also includes the narrative comment that "with accommodations, the student is making progress" (Doc. q).

DISCUSSION/CONCLUSIONS:

The public agency must offer each student with a disability a Free Appropriate Public Education (FAPE) through an IEP that includes special education and related services that address the student's identified needs. In developing each student's IEP, the public agency must ensure that the IEP team considers the strengths of the student, the concerns of the parents for enhancing the education of the student, the results of the most recent evaluation, and the academic, developmental, and functional needs of the student (34 CFR §§300.101, .320 and .324).

The public agency must ensure that the IEP team revises the IEP, as appropriate, to address lack of expected progress towards achievement of the goals (34 CFR §300.324).

In this case, the complainant alleges that because the student has not made steady progress in reading and continues to read below grade level, the IEP does not address his reading needs.

⁶ *i-Ready* is a reading intervention program that provides explicit online instruction in several reading domains through tutorial lessons with practice to reinforce skills and understanding, followed by a quiz that assesses the student's performance on the skill addressed by the particular tutorial. i-Ready also provides teacher-led lessons to reinforce the same skills taught through the online instruction but that may not have been mastered (See the *i-Ready* website: www.curriculumassociates.com).

⁷ *Foundations* is a reading intervention program that provides research-based instruction in reading and spelling strategies that is designed to integrate multiple learning modalities (See the *Foundations* website: www.wilsonlanguage.com)

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Based on the Findings of Facts #1, #3 - #5, #7, #8, #10, #12 and #15 - #18, the MSDE finds that, while the student demonstrated a regression in the area of reading, he is recouping skills and improving his reading performance. Based on the Findings of Facts #1, #2, #6 - #9 - #14, the MSDE finds that the IEP team has convened to address the student's lack of progress in reading, and that the IEP team revised the student's IEP in order to address his performance in reading, including a revision to the reading comprehension goal and an increase in the amount of specialized instruction in a separate special education classroom. Therefore, the MSDE finds no violation occurred with respect to this allegation.

**ALLEGATION # 2 DETERMINATION OF THE STUDENT'S NEED FOR
EXTENDED SCHOOL YEAR (ESY) SERVICES FOR THE
SUMMER OF 2016**

FINDINGS OF FACTS:

19. At the March 11, 2016 IEP team meeting, the IEP team considered the student's need for ESY services. The team made the following decisions:
 - a. The student's IEP includes annual goals related to life skills;
 - b. There is not a likely chance of substantial regression of critical life skills, as the student has demonstrated the ability to recoup skills in a reasonable amount of time.
 - c. The student was not demonstrating a degree of progress toward mastery of the IEP goals related to critical life skills;
 - d. There was no presence of emerging skills or breakthrough opportunities;
 - e. There were no significant interfering behaviors exhibited by the student;
 - f. The nature and severity of the student's disability did not warrant ESY services; and
 - g. There are other special circumstances that indicated a need for ESY services, specifically, that the "significant amount of time" during which the student was hospitalized resulted in missed academic instruction and related services in the educational setting (Doc. 1).
20. Based on the above information, the team determined that the benefits the student received from his educational program during the regular school year would be significantly jeopardized if the student was not provided with ESY services. Therefore, the IEP team determined that the student requires ESY services (Doc. 1).
21. The March 11, 2016 IEP reflects that the student's annual IEP goals in the areas of reading, math, written expression, vision, orientation and mobility, and fine motor are identified for instruction during ESY services. However, the written summary of the IEP

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meeting reflects that the IEP team did not include the student's annual IEP goal in the area of physical education "because [adaptive physical education] is a general education service not offered in the summer" (Doc. l).

22. The March 11, 2016 IEP documents that the student requires ESY services consisting of twenty (20) hours per week of instruction by a special educator, one (1) hour and forty (40) minutes per week of instruction by a teacher of the visually impaired, as well as related services (Doc. l).
23. On March 18, 2016, the school staff sent the March 11, 2016 IEP to the complainant. This was one (1) day after the complainant submitted the State complaint to the MSDE (Docs. r and t).
24. There is documentation that, in April 2015, the school system sent correspondence to the complainant stating that, based on the eligibility decision by the IEP team, the school system will provide ESY services to the student, and requesting the complainant's confirmation of whether the student will participate in ESY services. The complainant acknowledged this correspondence in her correspondence to the school system, dated April 21, 2016 (Doc. s).
25. On April 4, 2016, the school staff amended the student's IEP. The amended April 4, 2016 IEP reflects that the school staff reduced the amount of specialized instruction that the student requires during ESY from twenty (20) hours to seventeen (17) hours and thirty (30) minutes. However, the section of the April 4, 2016 IEP that reflects the discussion of ESY services states that, during ESY, the student will be provided with two (2) hours of specialized instruction per day in reading and writing, and two (2) hours of specialized instruction per day in math (Doc. n).
26. The school staff report that the IEP was amended in order to correct a "calculation error." The school staff report that they were informed that the total number of hours for ESY services may not exceed twenty (20) (Interview with the school staff).
27. There is no documentation that the school staff convened an IEP team meeting to amend the student's IEP on April 4, 2016. There is also no documentation that the school staff obtained the complainant's agreement to amend the student's IEP on April 4, 2016 without convening an IEP team meeting (Review of the student's educational record and interview with the school staff).

DISCUSSION/CONCLUSIONS:

The definition of special education includes adapted physical education (*Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46662, August 14, 2006).

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ESY services are an individualized extension of specific special education and related services beyond the regular school year that are designed to meet specific goals included in the student's IEP (34 CFR §300.106 and COMAR 13A.05.01.03B(26)). At least annually, the IEP team must determine whether the student requires ESY services in order to ensure that the student is not deprived of a FAPE by virtue of the normal break in the regular school year (Md. Ann. Code, Education Art. §8-405(b)).

When determining whether ESY services are required for the provision of FAPE, the IEP team must consider the following:

1. Whether the student's IEP includes annual goals related to critical life skills;
2. Whether there is a likelihood of substantial regression of critical life skills caused by the normal school break and a failure to recover those lost skills in a reasonable time;
3. The student's degree of progress toward mastery of the annual IEP goals related to critical life skills;
4. The presence of emerging skills or breakthrough opportunities;
5. Interfering behaviors;
6. The nature and severity of the disability; and
7. Special circumstances (COMAR 13A.05.01.08B).

After considering the required factors, the IEP team must decide whether the benefits that a student received from the education program during the regular school year will be *significantly jeopardized* (emphasis added) if the student is not provided with ESY services (MM v. School District of Greenville Co. (S.C.), 303 F3d. 523, 37 IDELR 183 (4th Cir. 2002)).

IEP team decisions may not be made solely on factors such as category of disability, severity of disability, availability of special education and related services, configuration of service delivery system, availability of space, or administrative convenience, but must be based on the student's individualized needs (34 CFR §§300.101, .320 and .324, and *Analysis of Comments and Changes to the IDEA*, Federal Register, Vol. 71, No. 156, p. 46588, August 14, 2006).

In this case, the complainant alleges that the IEP team did not follow proper procedures when determining the student's need for ESY because it did not determine the annual IEP goals to be addressed through ESY services.

Based on the Findings of Facts #19 - #26, the MSDE finds that the IEP team based its decision about the goals to be addressed during ESY on the service delivery system, and not on the student's individual needs. Therefore, this office finds that a violation occurred with respect to this allegation.

ADDITIONAL VIOLATIONS IDENTIFIED DURING THE INVESTIGATION:

In making changes to an IEP after the annual IEP team meeting, the parent of a child with a disability and the public agency may agree not to convene an IEP team meeting for the purposes of making those changes, and instead may develop a written document to amend or modify the student's current IEP. Changes to the IEP may be made either by the entire IEP team at an IEP team meeting, or with the agreement of the parent (34 CFR §§324).

Based on the Findings of Facts #25 - #27, the MSDE finds that there is no documentation that the IEP team convened on April 4, 2016 to amend the student's IEP, or that the complainant agreed to the amendment of the student's IEP on April 4, 2016 outside of an IEP team meeting. Therefore, this office finds that the school staff did not follow proper procedures to amend the IEP, and that an additional violation occurred.

In order to ensure that the student is provided with the special education services that are required, the IEP must be written in a manner that is clear to all who are involved in its development and implementation (34 CFR §§300.101 and .320, and *Analysis of Comments and Changes, Federal Register*, Vol. 64, No. 48, p.12479, March 1999).⁸

Based on the Finding of Fact #25, the MSDE also finds that, while the school staff amended one (1) section of the IEP to reflect that the student requires seventeen and a half (17.5) hours of specialized instruction per week during ESY, another section of the IEP indicates that the student is to receive sixteen (16) hours of specialized instruction per week during ESY. Therefore, this office finds an additional violation occurred because the IEP is not written clearly.

ALLEGATION #3 PROVISION OF IEP PROGRESS REPORTS FOR THE THIRD (3rd) AND FOURTH (4th) QUARTERS OF THE 2014 - 2015 SCHOOL YEAR

FINDINGS OF FACTS:

28. The IEP in effect during the third (3rd) and fourth (4th) quarters of the 2014 - 2015 school year requires that reports of the student's progress towards achievement of the annual IEP goals be provided to parents on a quarterly basis (Doc. e).
29. There is documentation that the school staff developed a report, dated March 25, 2015, of the student's progress towards mastery of the annual IEP goals for the third (3rd) quarter of the 2014 - 2015 school year (Doc. a).
30. The school staff maintain a log of when reports of a student's progress towards achievement of the annual IEP goals are sent to a parent. The log reflects that the report

⁸ In the 2004 reauthorization of the IDEA, no changes were made to this requirement.

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of the student's progress for the third (3rd) quarter of the 2014 - 2015 school year was sent to the complainant on April 2, 2015 (Doc. d).

31. There is no documentation that the school staff developed an IEP progress report for the fourth (4th) quarter of the 2014 - 2015 school year (Review of the student's educational record and interview with the school staff).
32. There is documentation that the school staff have developed reports of the student's progress toward mastery of his annual IEP goals in November 2015, January 2016 and March 2016 (Doc. a).

DISCUSSION/CONCLUSION:

The public agency must ensure that the IEP is implemented as written (34 CFR §§300.101, .103, and .323).

Based on the Findings of Facts #27 - #30, the MSDE finds that, while there is documentation that the school staff developed and sent the complainant the IEP progress report for the third (3rd) quarter of the 2014 - 2015 school year, there is no documentation that the school staff developed a report of the student's progress towards mastery of the annual IEP goals for the fourth (4th) quarter of the 2014 - 2015 school year. Therefore, the MSDE finds a violation occurred with respect to this allegation.

Notwithstanding the violation, based on the Finding of Fact #31, the MSDE does not require student-specific corrective action for this violation because the BCPS has developed subsequent reports of the student's mastery towards the annual IEP goals throughout the 2015 – 2016 school year.

CORRECTIVE ACTIONS/TIMELINE:

Student-Specific

The MSDE requires the BCPS to provide documentation, by June 15, 2016, that the IEP team, including the complainant, has convened and taken the following actions:

1. Determined ESY services that the student requires during the summer of 2016 based on his individualized needs; and
2. Amended the student's IEP to ensure that it is written clearly with respect to the amount of specialized instruction that the student requires for ESY during the summer of 2016.

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The BCPS must also provide the parent with proper written notice of the determinations made at the IEP team meeting, including a written explanation of the basis for the determinations, as required by 34 CFR §300.503.

School-Based

The MSDE requires the BCPS to provide documentation, by August 1, 2016, of the steps it has taken to ensure that XXXXXXXXX Elementary School implements the requirements for amending a student's IEP without an IEP team meeting, and providing progress reports with the frequency required by the IEP, and ensures that the IEP is written clearly with respect to the amount of services required, in accordance with 34 CFR §§300.101, .323, and .324).

Systemic

The MSDE requires the BCPS to provide documentation, by August 1, 2016, that steps have been taken, including appropriate staff training, to ensure that the determination of ESY services is based on the individual needs of the student. The steps must include informing school staff that this determination may not be made based on factors such as configuration of service delivery system, availability of space, or administrative convenience.

Documentation of all corrective action taken is to be submitted to this office to: Attention: Chief, Family Support and Dispute Resolution Branch, Division of Special Education/Early Intervention Services, MSDE.

TECHNICAL ASSISTANCE:

Technical assistance is available to the parties by contacting Dr. Nancy Birembaum, Compliance Specialist, Family Support and Dispute Resolution Branch, MSDE at (410) 767-7770.

Please be advised that both the complainant and the BCPS have the right to submit additional written documentation to this office, which must be received within fifteen (15) days of the date of this letter, if they disagree with the findings of facts or conclusions reached in this Letter of Findings. The additional written documentation must not have been provided or otherwise available to this office during the complaint investigation and must be related to the issues identified and addressed in the Letter of Findings.

If additional information is provided, it will be reviewed and the MSDE will determine if a reconsideration of the conclusions is necessary. Upon consideration of this additional documentation, this office may leave its findings and conclusions intact, set forth additional findings and conclusions, or enter new findings and conclusions. Pending the decision on a request for reconsideration, the school system must implement any corrective actions consistent with the timeline requirement as reported in this Letter of Findings.

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Questions regarding the findings and conclusions contained in this letter should be addressed to this office in writing. The parties maintain the right to request mediation or to file a due process complaint, if they disagree with the identification, evaluation, placement, or provision of a FAPE for the student, including issues subject to this State complaint investigation, consistent with the IDEA. The MSDE recommends that this Letter of Findings be included with any request for mediation or a due process complaint.

Sincerely,

Marcella E. Franczkowski, M.S.
Assistant State Superintendent
Division of Special Education/
Early Intervention Services

c: XXXXXX
 Linda Chen
 Jennifer Dull
 Darnell Henderson
 XXXXXXXXXXXXX
 Dori Wilson
 Anita Mandis
 K. Sabrina Austin
 Nancy Bireunbaum